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REMARKS

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This amendment is in response to the Office Action mailed 08/27/2007. The responses are in the order in which the issues are raised in the Office Action. Claims 1-18 are presented for examination.

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AMENDMENT TO DRAWINGS

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The Examiner suggests submitting a replacement sheet for Figure 1 which should be labeled "Prior Art". A replacement sheet labeled in accordance with the Examiner's suggestion is submitted herewith.

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AMENDMENT TO SPECIFICATION

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The Examiner objects to the use of Attorney Docket Number to identify incorporated material. The Examiner suggests using the related serial numbers. In response, the specification is amended according to the Examiner's suggestion.

REJECTION UNDER 35 U.S.C. §103

Claims 1-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Calamvokis et al. (U.S. Patent No. 6,856,622) in view of Chong et al. (U.S. Patent No. 6,212,582) and further in view of Counterman et al. (U.S. Patent No. 6,222,858).

Applicants respectfully traverse the rejection and assert the Claims are patentable for reasons set forth herein.

A.   Prima Facie Case of Obviousness Has Not Been Established

To establish a Prima Facie Case of Obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. §2143.

1.   Rejection Of Claim 1 – 35 U.S.C. §103(a)

It is Applicants' contention the following limitations in Claim 1 are not found in Calamvokis et al., Chong et al. and Counterman et al. single or in combination:

means (410) for storing the packet sequence number (PSNr) of a last received in-sequence data packet, and each highest packet sequence number (HPSNj) respectively received through a plurality of switching planes; and means (275) coupled to the comparing means and to the storing means for determining at least one switching plane among a plurality of switching planes on which to unstop a flow of data packets by comparing the last-received in-sequence packet sequence number (PSNr) to each highest

packet sequence number (HPSNj) when the number of data packets (WPC) exceeds the predefined threshold value (WPCth).

As a consequence, Claim 1 is patentable over the art of record. M.P.E.P. §2143.

With respect to Claim 1, the Examiner states: "Calamvokis fails to disclose a component of the system that compared a number of packets in the buffer with a threshold number and unstopped a flow of data packets when the number of packets in the buffer exceeds a threshold". The Examiner relied on Chong et al. for teaching this feature. The Examiner also states: "Flow control is viewed as the equivalent to unstopping".

Applicants traverse and argue equating "flow control" as being equivalent to "unstopped" is error. Applicants contend "flow control" and "unstopped" are not equivalent. Flow control appears to be a catch all phrase used to address techniques used to manage flows in a communications network. "Unstop" is not disclosed or used in any of the references cited by the Examiner. In fact, "unstop" is foreign to the references cited by the Examiner. As a consequence, one as to look to the document in which it originates to determine its meaning. That document is applicants' specification. Attention is directed to applicants' specification at page 17, line 13 through page 18, lines 1-7 where "unstop" is discussed. It is clear from this discussion that "unstop" or "unstopping" is not the equivalent to "flow control" as suggested by the Examiner. Because "unstopping" and "flow control" are not equivalent, the prior art has failed to disclose or suggest - means coupled to the comparing means and to the storing means for determining at least one switching plane among a plurality of switching planes on which

to unstop a flow of data packets by comparing the last-received in-sequence packet sequence number (PSNr) to each highest packet sequence number (HPSNj) when the number of data packets (WPC) exceeds the predefined threshold value (WPCth) – as recited in applicants' Claim 1. Therefore, a prima facie case of obviousness has not been established and the claim is not obvious in view of cited references.

With respect to the element of applicants' claim 1 that reads: "means for storing the packet sequence number (PSNr) of a last received in-sequence data packet, and each highest packet sequence number (HPSNj) respectively received through a plurality of switching planes", the Examiner admits this element is not found in Calamvokis et al. and relied on Counterman et al. for teaching it. In particular, the Examiner relied on the "simple k method" described at Counterman et al., page 10, lines 64-67 (08/27/2007, Office Action, page 4). A review of Counterman et al. including page 10, lines 64-67, clearly shows Counterman et al. discloses an order in which cells are serviced. In particular, flows with the lowest cell rates are serviced first followed by others in an ascending order of cell rates. It is clear that this teaching is not the same as applicants' element that calls for "means for storing the packet sequence number (PSNr) of a last received in-sequence data packet and each highest packet sequence number (HPSNj) respectively received through a plurality of switching planes."

As a consequence, this element of applicants' claim is not found in the prior art. Therefore, A PRIMA FACIE case on obviousness has not been established and Claim 1 is patentable over the art of record. M.P.E.P. §2143.

As argued above, it appears the Examiner has made error in concluding the above stated elements are found in the prior art when in fact they are not. As a consequence, the Examiner is relying on incorrect factual predicates to support the rejection and a prima facie case of obviousness has not been made. In re Rouffet, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Furthermore, applicants argue with respect to the Examiner's assertion that "flow control" is equivalent to "unstopping", the Examiner must provide a basis in fact and/or technical reasoning to support the assertion. See Ex Parte Levy, 17 U.S.P.Q. 2d 1461, 1464 (Bd. Pat App.& Int. 1990). That is the Examiner must provide extrinsic evidence that must make clear that "flow control" in Chong et al. corresponds to "UNSTOPPING" in applicants' claim and that it would be so recognized by persons of ordinary skill. See In re Robertson, 169 Fed. 3rd 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any objective evidence, a prima facie case of obviousness has not been established.

Furthermore, applicants argue that even if the elements that applicants argued, - above, are not disclosed in the cited references are deemed to be there. The Examiner's combination still would not teach all the limitations of Claim 1, which, in part, reads "determining at least one switching plane, among a plurality of switching planes". There is no suggestion or disclosure of this feature in any of the references. Therefore, a prima facie case of obviousness has not been established.

2.   Rejection of Claims 2-10, 35 U.S.C. §103(a)

Claims 2-10 are rejected under 35 U.S.C. §103(a) based upon the prior art set forth and discussed above. Claims 2-10 depend on Claim 1. As a consequence, the limitations set forth above are incorporated in the dependent Claims. Therefore, for reasons set forth above and incorporated herein by reference, the Examiner has not established a prima facie case of obviousness relative to Claims 2-10. As a consequence, Claims 2 -10 are patentable over the art of record.

With respect to the Examiner's application of the above references to the dependent Claims 2-10, it is believed the defect set forth above is not remedied by the application to these claims. Therefore, to prevent repetitious arguments, further argument, in the absence of additional references, is not warranted.

3.   Rejection of Claim 11 – 35 U.S.C. §103(a)

Claim 11 is rejected under 35 U.S.C. §103(a) based upon the prior art references set forth and discussed above.

As argued above and incorporated herein by reference, the Examiner has not made out a prima facie case of obviousness because every limitations of Claim 11 is not found in the references singly or in combination. Therefore, Claim 11 is patentable over the art of record M.P.E.P. §2143.

In particular, the limitations b) – d) (Claim 11) are not found in the references.

The argument made by the Examiner in applying the references to Claim 11 is substantially the same arguments that were made in applying the same references to Claim 1. As a consequence, the same argument made above by applicants in support of the patentability of Claim 1, is equally applicable and is incorporated herein by reference.

In addition, applicants would like to point out the references singly or in combination does not disclose or suggest determine at least one of the plurality of switching planes to unstop based upon the packet sequence number for the last received in-sequence packet number and the highest sequence number for at least one of the plurality of switching planes (Claim 11). Therefore, a prima facie case of Obviousness has not been made and Claim 11 is patentable over art of record. M.P.E.P. §2143.

4. Rejection of Claims 12-14 – 35 U.S.C. §103

Claims 12 through 14 are rejected under 35 U.S.C. §103(a) based upon Calamvokis et al., Chong et al., and Counterman et al. These are the same art the Examiner used in rejecting Claim 1. The Examiner's arguments used to support the rejection are substantially similar to the arguments raised to support the rejection of Claim 1.

In response, Applicants respectfully traverse the rejection. Claims 12-14 depend on Claim 11 and inherit the limitations of Claim 11. The limitations of Claim 11 are b) – d), set forth above and incorporated herein by reference. As argued above and incorporated herein by reference, these limitations are not found in any of the references singly or in combination. As a consequence, the Examiner has not established a prima

facie case of obviousness for rejecting Claims 12-14. M.P.E.P. §2143. Therefore, Claims 12-14 are not obvious and are patentable over the art of record.

In addition, Claim 13 is separately patentable in that it requires determining at least one of the plurality of switching planes under certain condition. There are no teachings or suggestions to determine a switching plane as recited in Claim 13. Since this limitation is not found in the cited references singly or in combination, the Examiner has not made out a prima facie case of obviousness. M.P.E.P. §2143.

Likewise, Claim 14 is separately patentable in that it calls for comparing the last received in – sequence packet number with the highest sequence number for each of the plurality of switching planes. This limitation is not found in any of the references. Therefore, the Examiner has not made out a prima facie case of obviousness in rejecting Claim 14. M.P.E.P. §2143. Therefore, Claim 14 is patentable over the art of record.

In response, to the Examiner's arguments supporting the rejection of Claims 11 – 14, it is applicants' contention that the arguments are substantially similar to those made in supporting the rejection of Claim 1. Applicants' response to those arguments is equally applicable and are incorporated herein by reference.

5.   Rejection of Claims 15 and 16 -35 U.S.C. §103

Claims 15 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over <u>Calamvokis et al.</u>, in view of <u>Chong et al.</u> and further in view of <u>Kumar et al.</u> (U.S. Patent No. 7,085,279). Even though the Examiner does not use the exact language as set forth in Claim 15, to the extent understood the Examiner's statement in the second to last full paragraph at page 9 of the Office Action mailed on 08/27/2007, is an admission that <u>Calamvokis et al.</u> does not disclose the first module, second module, or the third module as recited in Claim 15. The Examiner relied on <u>Counterman et al.</u> for teaching these elements. In particular, reliance is based upon the "simple k method" disclose in <u>Counterman et al.</u>

Applicants respectfully traverse and argue the Examiner has not established a prima facie case of obviousness because limitations in Claim 15 cannot be found in the <u>Calamvokis et al.</u>, <u>Chong et al.</u>, <u>Counterman et al.</u> and <u>Kumar et al.</u> singly or in combination. The limitations that are in Claim 15 and not found in any of the references are: "a first module of instructions that examine packets in a flow and recording a packet sequence number for a last received in-sequence packet; a second module of instructions that examine packets received through a plurality of switching planes and record highest sequence number for packets received through each of the plurality of switching planes; and a third module of instructions using the packet sequence number for last received in-sequence packet number and the highest sequence number for each of the plurality of switching planes to identify at least one plane to unstop. Because none of these elements are found in the prior art, the Examiner has not established a prima facie case of

obviousness relative to Claim 15. M.P.E.P. §2143. As a consequence, Claim 15 is patentable over the art of record.

Claim 16 depends on Claim 15 and as argued above and incorporated herein by reference, inherits the limitations of Claim 15, and is patentable over the art of record.

The Examiner's argument (page 10 first full paragraph, 08/27/2007 Office Action) to wit: "Counterman et al. teaches the benefits of reduce packet/cell loss by implementing a "simple k method" so that low priority cells are not stuck in a group of data streams while high priority cells continue through the system (column 5, lines 23-29)" appear to be in error.

It is applicants' contention that no reasonable construction of the "simple k method" or teachings at col.5, lines 23 -29 would lead one to reach the conclusion set forth by the Examiner. Neither the "simple k method" nor teachings at col. 5, lines 23-29, relate to sticking of low priority cells. Instead, "simple k method" relates to servicing flows with lowest cell rate first, followed by the flow with the next highest cell rate and so forth. See col.19, lines 64-67. Likewise, teachings at col. 5, lines 23–29 relate to servicing links with different QoS (QUALITY OF SERVICE) objectives such as low delay and low cell loss. In view of thus error, the Examiner has not made out a prima facie case of obviousness, since reliance is based upon incorrect factual predicates in support of the rejection. In re Rouffet, 47 U.S.P.Q. 2d 1453, 1455 (Fed.Cir.1998).

Regarding newly added dependent claims 17 and 18, they are patentable over the references due to dependency on Claims 1 and 11, respectfully.

In addition, Claims 17 and 18 are separately patentable because they recite limitations not found in any of the references. As a consequence, they are patentable over art of record.

CONCLUSION

It is believed that the present amendment answers all the issues raised by the

Office Action. Reconsideration is hereby requested and early allowance of claims 1-18 is

solicited.

Although it is believed no fees are due, the Commissioner is authorized to charge

any fees associated with filing of this correspondence to the Deposit Account No. **09-**

1990.

<div style="text-align: right">Respectfully submitted,</div>

Date: _November 26, 2007_   _/Joscelyn G. Cockburn/_

Joscelyn G. Cockburn
Registration No.: 27069
IBM Corporation
IP Law Dept. YXSA/Bldg. 002
P.O. Box 12195
Research Triangle Park, NC 27709
Phone: (919) 543-9036
Fax: (919) 254-2649